

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

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| In the Matter of the Complaint |) | SUMMARY OF FACTS |
| Against School District 2 |) | AND |
| Parents, Taxpayers, and Voters |) | STATEMENT OF FINDINGS |

Merle Peifer filed a complaint with the Commissioner of Political Practices (Commissioner) alleging that School District 2 Parents, Taxpayers, and Voters violated Montana campaign finance and practices laws. The complaint alleges that the group violated Montana Code Annotated § 13-35-225 when it circulated anonymous campaign material.

SUMMARY OF FACTS

1. Merle Peifer is the former treasurer of the Michael Burke campaign. Burke ran for a school board trustee position, Billings School District 2, in the May 6, 2003 election.

2. In the same election, Ken Peterson ran for a school board trustee position, Billings School District 2, and Jerry Wilson ran for the high school trustee position.

3. Peifer included with his complaint a printed document containing the following heading: "Welcome! School District 2 Parents, Taxpayers & Voters Association." The document contains a detailed discussion of campaign information relating to trustee candidates Burke, Wilson, and Peterson. The document states that the association obtained, from the office of the county election administrator's office, five pages of documents for each of nine candidates running for available school district trustee seats. The document also states: "We urge all voters of integrity to summarily REJECT candidates BURKE, WILSON and PETERSON and to make these facts known as soon as possible to your voting friends, neighbors and co-workers." The hard copy of the

document included with the complaint contains no information identifying its author, no contact information, and does not disclose who paid for the creation of the document.

4. The Commissioner's office received several telephone calls from individuals prior to the May 6, 2003 trustee election complaining about flyers that were critical of trustee candidates Burke, Wilson, and Peterson. The individual callers stated the flyers did not contain a disclaimer required for campaign communications.

5. An article in the April 29, 2003 edition of the Billings Gazette reported that "the sd2ptv Association" was circulating flyers in opposition to trustee candidates Burke, Wilson, and Peterson. The article stated: "The group's flyer does not list the names of any of its members, but does include an e-mail address, sd2ptv@aol.com." The "sd2ptv Association" is the same as the association known as School District 2 Parents, Taxpayers, and Voters that is the subject of this complaint, and it will be referred to herein as "sd2ptv."

6. On April 29, 2003, the Commissioner's office sent an email to the address listed in the Billings Gazette article, suggesting that sd2ptv contact the Commissioner's office to inquire about compliance with campaign finance and reporting requirements. Sd2ptv did not respond to the email.

7. On May 2, 2003, the Billings Gazette published another article concerning the activities of sd2ptv, including the group's distribution of the flyer. An individual identifying himself as Greg Barland later emailed the Gazette and stated that he was a member of sd2ptv. Mr. Barland did not provide any other contact information in his email.

8. On May 2, 2003, an employee of the Commissioner's office received a telephone call from an individual who asked for faxed copies of cash summary pages of C-5 reports filed by school district trustee candidates Burke, Peterson, and Wilson. The employee asked who was calling, and the caller identified himself as Greg Barland and gave a cell phone number. The call was transferred to the Commissioner who informed

Mr. Barland that her office had learned sd2ptv was distributing campaign materials without disclaimers. The Commissioner advised Mr. Barland that his group needed to register as a political committee.

9. Mr. Peifer filed his complaint on May 2, 2003. After the complaint was filed, the Commissioner was contacted by a reporter for a Billings newspaper who inquired about Greg Barland. During the conversation the reporter advised the Commissioner that sd2ptv had a website created through AOL.Hometown. The Commissioner accessed the website and found online the same flyer that was attached to Mr. Peifer's complaint.

10. On May 6, 2003, the Commissioner contacted Mr. Barland by telephone in order to obtain his mailing address to send him a copy of Mr. Peifer's complaint. Mr. Barland asked the Commissioner to send it to "general delivery" in Billings. During the conversation Mr. Barland advised the Commissioner that sd2ptv was not an association but rather a group of a dozen or so people who met at his house and did not spend any money.

11. On May 8, 2003, the Commissioner attempted to access sd2ptv's AOL.Hometown page to make a copy of the flyer, but it had been removed. Subsequent efforts to locate a copy of the removed website page were unsuccessful.

12. On May 14, 2003, sd2ptv submitted a written response to the complaint to the Commissioner's office, including the following comments:

. . . Five documentation packages were prepared and a cover letter inserted. Apparently it was found factual and newsworthy as two newspapers and three TV stations confirmed, reported and made known our findings . . . An impromptu web page was made which was the cover letter with a graphic of the campaign signs. Contrary to reports, there were no flyers or handbills ever produced or distributed. Not even one! No phone calls were made or doors knocked on . . . Any expenditure made, was to make factual information known.

Because seemingly credible sources warned of possible retribution, the original cover letter was anonymous. When sd2ptv first became aware of

its non-compliance with the non-anonymity provision, Mr. Barland, who was away for a few days, added his name to the web page as soon as possible. No one else knew how! Additionally, all candidate names were removed from the web page.

Until this blew up, we were unaware of what a political or campaign practice was, or that your office even existed . . .

13. On May 18, 2003, sd2ptv sent additional comments in response to the complaint, including the following:

. . . The only expenditure was to make factual information known to the media. Five cover letters (\$.05 X7 = \$.35) accompanying public record information plus postage.

. . . The initial web page (Is this a form of “general political advertising” as specified in MCA § 13-35-225?) was a duplicate of the media cover letter with a graphic of the identical campaign signs. Someone had AOL service with free web page space.

. . . No e-mails were sent (0 of 75) advocating the success or defeat of any candidate. Public record information was clarified if there were questions.

14. On May 19, 2003, the Commissioner received an email from “Nobody Home” at used2b_sd2ptv@yahoo.com, stating that a hard copy of sd2ptv’s response to the complaint had been sent to the Commissioner’s office by regular mail. The email message also stated: “sd2ptv is now defunct.” Subsequent efforts to contact Mr. Barland at that email address resulted in an automated response that the message was “undeliverable.”

15. Efforts to contact Mr. Barland at his cell phone number were also unsuccessful as the number was disconnected. There is no “Greg Barland” listed in any Billings area telephone directories, and efforts to locate Mr. Barland through “people finder” Internet search engines have been unsuccessful.

16. The investigation into the complaint failed to disclose any other persons affiliated with sd2ptv.

17. The election administrator's office in Yellowstone County charges \$.25 per copy if more than four copies are requested. Sd2ptv stated in its political flyer that it obtained five copies of documents for each of nine candidates running for school board trustee positions. (Fact 3). Sd2ptv then created five packages to send to the media consisting of five documents for the three candidates whose defeat it was seeking (Burke, Wilson, and Peterson), five cover letters, and postage.

STATEMENT OF FINDINGS

The complaint alleges that the flyer distributed by sd2ptv did not contain a disclaimer identifying who paid the costs of the communication. Prior to October 1, 2003, Montana Code Annotated § 13-35-225 provided:

Election materials not to be anonymous. (1) Whenever a person makes an expenditure for the purpose of financing communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, or other form of general political advertising, the communication must clearly and conspicuously state the name and address of the person who made or financed the expenditure for the communication, including in the case of a political committee, the name and address of the treasurer. Communications in a partisan election financed by a candidate or a political committee organized on the candidate's behalf must state the candidate's party affiliation or include the party symbol.

(2) If a document or other article of advertising is too small for the requirements of subsection (1) to be conveniently included, the person financing the communication shall file a copy of the article with the commissioner, together with the required information, prior to its public distribution.

(3) If information required in subsection (1) is inadvertently omitted or not printed, upon discovering the omission, the person financing the communication shall file notification of the omission with the commissioner within 5 days and make every reasonable effort to bring the material into compliance with subsection (1).

The communication financed by sd2ptv urged voters to reject candidates Burke, Wilson, and Peterson; therefore, it was a form of general political advertising that advocated the defeat of those three candidates. It should have included information identifying the name and address of the person who financed the expenditure for the communication.

The failure to include that information constitutes a violation of Montana Code Annotated § 13-35-225. Any person who makes an expenditure in violation of the statute is liable in a civil action for \$500 or three times the amount of the unlawful expenditure, whichever is greater. Montana Code Annotated § 13-37-128(2). Since Greg Barland cannot be located and this investigation has not disclosed the names of any other persons affiliated with sd2ptv, it is not possible to pursue a civil action based on the violation of Montana Code Annotated § 13-35-225.

CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, there is substantial evidence to conclude that School District 2 Parents, Taxpayers & Voters violated Montana campaign finance and practices reporting and disclosure laws and rules; however, since this matter cannot be prosecuted, no further action will be taken.

Dated this 26th day of August, 2004.

Linda L. Vaughey
Commissioner